

COMMUNICATION FROM THE
CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 9, 2021.

Hon. NANCY PELOSI,
The Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on March 9, 2021, at 9:49 a.m.:

That the Senate passed with an amendment H.R. 1319.

With best wishes, I am,

Sincerely,

ROBERT F. REEVES,
Deputy Clerk.

PROTECTING THE RIGHT TO
ORGANIZE ACT OF 2021

Mr. SCOTT of Virginia. Mr. Speaker, pursuant to House Resolution 188, I call up the bill (H.R. 842) to amend the National Labor Relations Act, the Labor Management Relations Act, 1947, and the Labor-Management Reporting and Disclosure Act of 1959, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 188, the amendment printed in part A of House Report 117-10 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 842

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Protecting the Right to Organize Act of 2021”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—AMENDMENTS TO THE NATIONAL
LABOR RELATIONS ACT**

Sec. 101. Definitions.

Sec. 102. Reports.

Sec. 103. Appointment.

Sec. 104. Unfair labor practices.

Sec. 105. Representatives and elections.

Sec. 106. Damages for unfair labor practices.

Sec. 107. Enforcing compliance with orders of the board.

Sec. 108. Injunctions against unfair labor practices involving discharge or other serious economic harm.

Sec. 109. Penalties.

Sec. 110. Limitations on the right to strike.

Sec. 111. Fair share agreements permitted.

**TITLE II—AMENDMENTS TO THE LABOR
MANAGEMENT RELATIONS ACT, 1947 AND
THE LABOR-MANAGEMENT REPORTING
AND DISCLOSURE ACT OF 1959**

Sec. 201. Conforming amendments to the Labor Management Relations Act, 1947.

Sec. 202. Amendments to the Labor-Management Reporting and Disclosure Act of 1959.

TITLE III—OTHER MATTERS

Sec. 301. Severability.

Sec. 302. Authorization of appropriations.

Sec. 303. Rule of Construction.

**TITLE I—AMENDMENTS TO THE NATIONAL
LABOR RELATIONS ACT**

SEC. 101. DEFINITIONS.

(a) **JOINT EMPLOYER.**—Section 2(2) of the National Labor Relations Act (29 U.S.C. 152(2)) is amended by adding at the end the following: “Two or more persons shall be employers with respect to an employee if each such person co-determines or shares control over the employee’s essential terms and conditions of employment. In determining whether such control exists, the Board or a court of competent jurisdiction shall consider as relevant direct control and indirect control over such terms and conditions, reserved authority to control such terms and conditions, and control over such terms and conditions exercised by a person in fact: Provided, That nothing herein precludes a finding that indirect or reserved control standing alone can be sufficient given specific facts and circumstances.”.

(b) **EMPLOYEE.**—Section 2(3) of the National Labor Relations Act (29 U.S.C. 152(3)) is amended by adding at the end the following: “An individual performing any service shall be considered an employee (except as provided in the previous sentence) and not an independent contractor, unless—

“(A) the individual is free from control and direction in connection with the performance of the service, both under the contract for the performance of service and in fact;

“(B) the service is performed outside the usual course of the business of the employer; and

“(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed.”.

(c) **SUPERVISOR.**—Section 2(11) of the National Labor Relations Act (29 U.S.C. 152(11)) is amended—

(1) by inserting “and for a majority of the individual’s worktime” after “interest of the employer”;

(2) by striking “assign,”; and

(3) by striking “or responsibly to direct them,”.

SEC. 102. REPORTS.

Section 3(c) of the National Labor Relations Act is amended—

(1) by striking “The Board” and inserting “(1) The Board”;

(2) by adding at the end the following:

“(2) Effective January 1, 2023, section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166-44; 31 U.S.C. 1113 note) shall not apply with respect to reports required under this subsection.

“(3) Each report issued under this subsection shall—

“(A) include no less detail than reports issued by the Board prior to the termination of such reports under section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (Public Law 166-44; 31 U.S.C. 1113 note);

“(B) list each case in which the Designated Agency Ethics Official provided advice regarding whether a Member should be recused from participating in a case or rulemaking; and

“(C) list each case in which the Designated Agency Ethics Official determined that a Member should be recused from participating in a case or rulemaking.”.

SEC. 103. APPOINTMENT.

Section 4(a) of the National Labor Relations Act (29 U.S.C. 154(a)) is amended by striking “, or for economic analysis”.

SEC. 104. UNFAIR LABOR PRACTICES.

Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(1) in subsection (a)—

(A) in paragraph (5), by striking the period and inserting “;”;

(B) by adding at the end the following:

“(6) to promise, threaten, or take any action—

“(A) to permanently replace an employee who participates in a strike as defined by section 501(2) of the Labor Management Relations Act, 1947 (29 U.S.C. 142(2));

“(B) to discriminate against an employee who is working or has unconditionally offered to return to work for the employer because the employee supported or participated in such a strike; or

“(C) to lockout, suspend, or otherwise withhold employment from employees in order to influence the position of such employees or the representative of such employees in collective bargaining prior to a strike; and

“(7) to communicate or misrepresent to an employee under section 2(3) that such employee is excluded from the definition of employee under section 2(3).”.

(2) in subsection (b)—

(A) by striking paragraphs (4) and (7);

(B) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(C) in paragraph (4), as so redesignated, by striking “affected,” and inserting “affected; and”;

(D) in paragraph (5), as so redesignated, by striking “; and” and inserting a period;

(3) in subsection (c), by striking the period at the end and inserting the following: “: Provided, That it shall be an unfair labor practice under subsection (a)(1) for any employer to require or coerce an employee to attend or participate in such employer’s campaign activities unrelated to the employee’s job duties, including activities that are subject to the requirements under section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(b)).”.

(4) in subsection (d)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(B) by striking “For the purposes of this section” and inserting “(1) For purposes of this section”;

(C) by inserting “and to maintain current wages, hours, and terms and conditions of employment pending an agreement” after “arising thereunder”;

(D) by inserting “: Provided, That an employer’s duty to collectively bargain shall continue absent decertification of the labor organization following an election conducted pursuant to section 9” after “making of a concession.”;

(E) by inserting “further” before “, That where there is in effect”;

(F) by striking “The duties imposed” and inserting “(2) The duties imposed”;

(G) by striking “by paragraphs (2), (3), and (4)” and inserting “by subparagraphs (B), (C), and (D) of paragraph (1)”;

(H) by striking “section 8(d)(1)” and inserting “paragraph (1)(A)”;

(I) by striking “section 8(d)(3)” and inserting “paragraph (1)(C)” in each place it appears;

(J) by striking “section 8(d)(4)” and inserting “paragraph (1)(D)”;

(K) by adding at the end the following:

“(3) Whenever collective bargaining is for the purpose of establishing an initial collective bargaining agreement following certification or recognition of a labor organization, the following shall apply:

“(A) Not later than 10 days after receiving a written request for collective bargaining from an individual or labor organization that has been newly recognized or certified as a representative as defined in section 9(a), or within such further period as the parties agree upon, the parties shall meet and commence to bargain collectively and shall make every reasonable effort to conclude and sign a collective bargaining agreement.

“(B) If after the expiration of the 90-day period beginning on the date on which bargaining is commenced, or such additional period as the parties may agree upon, the parties have failed to reach an agreement, either party may notify